

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 EA-07 IO-13 ISO-00 SSO-00 AID-05
CIAE-00 COME-00 EB-07 FRB-03 INR-07 NSAE-00
TRSE-00 XMB-02 OPIC-03 SP-02 LAB-04 EPG-02 SIL-01
OMB-01 NSC-05 SS-15 STR-04 CEA-01 JUSE-00 SEC-01
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FM AMEMBASSY TOKYO
TO SECSTATE WASHDC IMMEDIATE 8680
INFO AMEMBASSY BERN PRIORITY
AMEMBASSY BONN PRIORITY
AMEMBASSY BRUSSELS PRIORITY
AMEMBASSY CANBERRA PRIORITY
AMEMBASSY THE HAGUE PRIORITY
AMEMBASSY LONDON PRIORITY
AMEMBASSY OTTAWA PRIORITY
AMEMBASSY OSLO PRIORITY
AMEMBASSY PARIS PRIORITY
AMEMBASSY ROME PRIORITY
USMISSION USUN NEW YORK PRIORITY
USMISSION GENEVA PRIORITY

C O N F I D E N T I A L TOKYO 8954

USEEC

USOECD

E.O. 11652: GDS
TAGS: EGEN, EINV, UN, ECOSOC
SUBJECT: INTERNATIONAL AGREEMENT ON ILLICIT PAYMENTS

REF: (A) STATE 134235; (B) STATE 137865 (NOTAL); (C) STATE 136934
AND (D) TOKYO 8177

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1. SUMMARY: GOJ MAKING SOME PROGRESS IN INTERAGENCY REVIEW
ON SUBJECT AGREEMENT BUT JUDICIAL CONSTRAINTS REMAIN MAJOR
STUMBLING BLOCK. GOJ DELEGATION WILL PARTICIPATE IN JUNE
20, PARIS CONSULTATIONS. FONMIN BELIEVES IT IMPORTANT TO
DEVELOP STRATEGY AT THAT MEETING FOR DEALING WITH LDC'S.
GOJ IN AGREEMENT WITH U.S. PROPOSED TEXT FOR INCLUSION
OECD MINISTERIAL COMMUNIQUE. END SUMMARY.

2. DCM AND EMBOFF CALLED ON DEPUTY MINISTER FOR FOREIGN AFFAIRS, KEISUKE ARITA ON JUNE 15 FOR FURTHER DISCUSSION OF INTERNATIONAL AGREEMENT ON ILLICIT PAYMENTS. DCM STRESSED PERSONAL INTEREST PRESIDENT CARTER HAS IN SUBJECT INTERNATIONAL AGREEMENT AND SUPPORT HE RECEIVED FROM PARTICIPANTS IN LONDON SUMMIT MEETING. HE ALSO MADE THE POINT, RESPONDING TO GOJ QUESTION ABOUT U.S. "PACKAGE PROPOSAL" (REFTEL D) RAISED AT EARLIER MEETING, THAT U.S. IS WILLING TO BE FLEXIBLE ON PUBLIC DISCLOSURE IF THERE IS EVIDENCE THAT PARTICIPATING COUNTRIES WOULD AGREE TO PROHIBITING BRIBERY OF FOREIGN OFFICIALS AND REPORTING OF AGENT FEES PAID IN CONNECTION WITH INTERNATIONAL TRANSACTIONS WITH GOVERNMENTS.

3. ARITA SAID HE HAD NOT BEEN FOLLOWING THIS SUBJECT AND ASKED SEVERAL QUESTIONS FOR HIS OWN EDIFICATION. HE SAID GOJ IS WORKING ALONG TWO LINES; THE GOJ IS IN GENERAL AGREEMENT WITH THE U.S. PROPOSAL AND SUPPORTS THE NEED FOR AN INTERNATIONAL AGREEMENT ON ILLICIT PAYMENTS; AND SECOND, THERE IS A NEED TO WORK WITHIN THE JAPANESE LEGAL STRUCTURE TO DEVELOP THE LEGISLATION REQUIRED TO IMPLEMENT SUCH AN AGREEMENT. THE GOJ, HE SAID, HAS NO PROBLEM WITH THE U.S. PROPOSED TEXT FOR INCLUSION IN OECD MINISTERIAL COMMUNIQUE.

4. MASAKI YAGI, DIRECTOR, ECONOMIC AFFAIRS DIVISION, UN BUREAU FONMIN, SAID SOME PROGRESS HAS BEEN MADE
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IN THE INTER-MINISTERIAL DISCUSSIONS, BUT THE BASIC PROBLEM REMAINS, HOWEVER, HOW TO ACHIEVE THE OBJECTIVE OF CONTROLLING ILLICIT PAYMENTS WITHIN THE JAPANESE LEGAL SYSTEM. IT MAY BE POSSIBLE, BUT WITH SOME DIFFICULTY, HE SAID, TO PROMULGATE THE SPECIAL LEGISLATION REQUIRED TO MAKE ILLICIT PAYMENTS TO FOREIGN GOVERNMENT OFFICIALS A CRIMINAL OFFENSE. FOR EXAMPLE, ONE STUMBLING BLOCK TO OVERCOME IS GETTING A MINISTRY TO DRAFT THE NECESSARY LEGISLATION. MITI IS RELUCTANT TO UNDERTAKE THE JOB AND JUSTICE IS "NOT IN A POSITION TO DRAFT SUCH LEGISLATION" (HE SAID IT WAS TOO COMPLICATED TO EXPLAIN JUSTICE'S POSITION). THE QUESTION OF PUBLIC DISCLOSURE OF AGENT FEES, HOWEVER, IS A MUCH MORE DIFFICULT PROBLEM AS IT INVOLVES THE CONSTITUTION; CONSEQUENTLY, THERE IS LITTLE PROBABILITY THAT GOJ WOULD PROMULGATE PUBLIC DISCLOSURE LEGISLATION. ARTICLE 38 OF THE CONSTITUTION PROTECTS INDIVIDUAL PRIVACY AND JAPANESE LAW DOES NOT DISTINGUISH BETWEEN

JURIDICAL AND NATURAL PERSONS, HE SAID; THE GOJ,
THEREFORE, WELCOMES U.S. FLEXIBILITY TOWARDS PUBLIC
DISCLOSURE.

5. YAGI SAID GOJ DELEGATION WILL PARTICIPATE IN
PARIS CONSULTATION, JUNE 20 AND HOPES THAT A
SUBSTANTIVE REPORT COULD COME OUT OF THAT MEETING.
HE THOUGHT IT WAS IMPORTANT THAT THE PARTICIPANTS
IN THE CONSULTATIONS CLARIFY THEIR TACTICS FOR
DEALING WITH THE LDC'S.
MANSFIELD

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